

IN THE UNITED STATES DISTRICT COURT
FOR THE EASTERN DISTRICT OF TEXAS

TYLER DIVISION

CHARLES ELLIS SHIRLEY

§

VS.

§

CIVIL ACTION NO. 6:06cv75

SHERIFF, SMITH COUNTY

§

ORDER OF DISMISSAL

The above-entitled and numbered civil action was heretofore referred to United States Magistrate Judge John D. Love, who issued a Report and Recommendation concluding that the lawsuit should be dismissed. The Petitioner has filed objections.


The Report and Recommendation of the Magistrate Judge, which contain his proposed findings of fact and recommendations for the disposition of such action, has been presented for consideration, and having made a *de novo* review of the objections raised by the Petitioner, the Court is of the opinion that the findings and conclusions of the Magistrate Judge are correct.

The Report and Recommendation correctly concluded that the petition for a writ of habeas corpus should be dismissed for failure to exhaust state habeas corpus remedies since the Texas Court of Criminal Appeals had not had the opportunity to consider his claims. The Petitioner stated in his objections that he filed a petition for a writ of habeas corpus. In response to interrogatories, he admitted that he filed the petition in the trial court. He has not shown that the Texas Court of Criminal Appeals has considered a petition by him, thus he has not exhausted his state habeas corpus remedies. The objections lack merit.

The Report and Recommendation also noted that the claim about denial of access to a law library is actually a civil rights claim. Such civil rights claim should be dismissed because the Petitioner has been appointed an attorney to represent him in the criminal proceedings pending in Smith County. *See Green v. Ferrell*, 801 F.2d 765, 772 (5th Cir. 1986); *Morrow v. Harwell*, 768 F.2d 619, 623 (5th Cir. 1985). Providing a criminal defendant an attorney alone is sufficient. *United States v. Wilson*, 666 F.2d 1241 (9th Cir. 1982). The Petitioner ignored the findings in the Report and Recommendation in filing his objections; nonetheless, the objections lack merit for the reasons explained by Magistrate Judge Love. Thus the Court hereby adopts the findings and conclusions of the Magistrate Judge as the findings and conclusions of the Court. It is accordingly

ORDERED that the petition for a writ of habeas corpus is **DISMISSED** without prejudice for failure to exhaust state habeas corpus remedies. To the extent that the petition includes civil rights claims for denial of access to court, such claims are **DISMISSED** with prejudice pursuant to 28 U.S.C. § 1915A(b)(1). All motions not previously ruled on are hereby **DENIED**.

SIGNED this 20th day of June, 2006.


MICHAEL H. SCHNEIDER
UNITED STATES DISTRICT JUDGE